



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0144; FRL-9996-04-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Removal of Allegheny County Requirements Applicable to Gasoline Volatility in the Allegheny County Portion of the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania, on behalf of the Allegheny County Health Department (ACHD). The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision on March 19, 2019 seeking to remove from the Pennsylvania SIP an Allegheny County requirement limiting summertime gasoline volatility in Allegheny County to 7.8 pounds per square inch (psi) Reid Vapor Pressure (RVP). The original purpose of that gasoline requirement was to address nonattainment under the 1-hour ozone national ambient air quality standard (NAAQS) in the Pittsburgh-Beaver Valley ozone nonattainment area (hereafter Pittsburgh-Beaver Valley Area). EPA acted in December 2018 to remove similar 7.8 psi RVP requirements that applied to the entire Pittsburgh-Beaver Valley Area, as the requirements are no longer needed to address nonattainment in the area and have been supplanted by other emissions control measures. This action serves to remove the separate comparable requirement in the Pennsylvania SIP that applies only to Allegheny County.

The approval of this SIP revision is supported by the demonstration prepared by Pennsylvania in support of the earlier SIP revision. That demonstration shows that, pursuant to the Clean Air Act (CAA), removal of the 7.8 psi RVP requirements from the SIP will not interfere with the area's ability to attain or maintain any NAAQS, nor will it be inconsistent with any other CAA requirements. EPA is approving this revision to remove the ACHD requirements for use of 7.8 psi RVP gasoline in summer months from the Pennsylvania SIP, in accordance with the requirements of the CAA.

DATES: This final rule is effective on [insert date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2019-0144. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2176. Mr. Rehn can also be reached via electronic mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 26, 2019 (84 FR 17762), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania proposing to approve its revision to remove from the Pennsylvania SIP the ACHD requirements for use of 7.8 psi RVP gasoline during summer months in Allegheny County, Pennsylvania. The formal SIP revision requesting this removal of the ACHD summertime low RVP program for the Pittsburgh-Beaver Valley Area was submitted by PADEP, on Allegheny County's behalf, on March 19, 2019. In the NPRM, EPA proposed to approve Pennsylvania's request to remove the 7.8 psi RVP summertime gasoline requirement in Allegheny County from the Pennsylvania SIP.

EPA received several adverse comments on the April 26, 2019 proposed rulemaking. EPA has addressed the public comments received on this action below, in Section IV of this preamble. EPA is finalizing approval of Pennsylvania's request to remove the ACHD 7.8 psi RVP summer gasoline requirements applicable to Allegheny County from the SIP and has concluded that doing so does not interfere with the Pittsburgh-Beaver Valley Area's ability to attain or maintain any NAAQS under section 110(l) of the CAA.

II. Summary of the Pennsylvania SIP Revision

A. Pennsylvania's Gasoline Volatility Requirements for the Pittsburgh-Beaver Valley Area

On November 6, 1991, EPA designated and classified the Pittsburgh-Beaver Valley Area as moderate nonattainment for the 1979 1-hour ozone NAAQS. As part of Pennsylvania's efforts to bring the Pittsburgh-Beaver Valley Area into attainment of the then applicable ozone NAAQS,

the PADEP and ACHD responded by adopting a range of ozone precursor emission control measures for the area -- including adoption of separate state and Allegheny County rules to limit summertime gasoline volatility to 7.8 psi RVP. While Pennsylvania's RVP control rule applied to the entire Pittsburgh-Beaver Valley Area – Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties - ACHD adopted a substantially similar rule applicable only in Allegheny County.

Each of these overlapping RVP control rules was separately submitted to EPA for inclusion in the Pennsylvania SIP. PADEP promulgated its rule applicable to the entire Pittsburgh-Beaver Valley Area in the November 1, 1997 *Pennsylvania Bulletin* (27 Pa.B. 5601, effective November 1, 1997), codifying its rule at Subchapter C of Chapter 126 of the Pennsylvania Code of Regulations (25 Pa. Code Chapter 126, Subchapter C). Pennsylvania first submitted that rule for inclusion in the Pennsylvania SIP on April 17, 1998, which EPA approved on June 8, 1998 (63 FR 31116). The ACHD initially adopted its own substantially similar summertime gasoline 7.8 psi RVP rule (applicable only to Allegheny County) via Allegheny County Order No. 16782, Article XXI, sections 2102.40, 2105.90, and 2107.15 (effective May 15, 1998, amended August 12, 1999). On March 23, 2000, PADEP submitted this ACHD rule to EPA for incorporation into the Pennsylvania SIP, which EPA approved on April 17, 2001 (66 FR 19724), effective June 18, 2001.

B. PADEP and ACHD Actions to Suspend Low RVP Gasoline Requirements

In the 2013 through 2014 session, the Pennsylvania General Assembly passed, and Governor Corbett signed into law, Act 50 (P.L. 674, No. 50 of May 14, 2014). Act 50 amended the

Pennsylvania Air Pollution Control Act, directing PADEP to initiate a process to obtain approval from EPA of a SIP revision that demonstrates continued compliance with the NAAQS, through utilization of substitute, commensurate emissions reductions to offset the emissions reduction impact associated with repeal of the Pittsburgh-Beaver Valley Area 7.8 RVP gasoline requirement. Act 50 directs PADEP to repeal, upon EPA approval of its NAAQS noninterference demonstration, the summertime gasoline RVP limit provisions of 25 Pa. Code Chapter 126, Subchapter C.

On May 2, 2018, PADEP submitted a SIP revision to EPA requesting removal from the Pennsylvania SIP of the state requirements of Chapter 126, Subchapter C of the Pennsylvania Code, based upon a demonstration that the repeal of the RVP requirements rule (coupled with other ozone precursor emission reduction measures) would not interfere with the Pittsburgh-Beaver Valley Area's attainment of any NAAQS, per the requirements for noninterference set forth in section 110(l) of the CAA. Section 110(l) prohibits EPA from approving a SIP revision if the revision "would interfere with any applicable requirement concerning attainment and reasonable further progress... or any other applicable requirement of [the Act.]"

On December 20, 2018 (83 FR 65301), EPA approved Pennsylvania's May 2018 request to remove from the SIP PADEP's rules under 25 Pa. Code Chapter 126 requiring 7.8 psi RVP gasoline during summer months in the greater Pittsburgh-Beaver Valley Area. EPA's action also approved Pennsylvania's CAA 110(l) NAAQS noninterference demonstration showing that the emissions impact from repeal of the 7.8 psi gasoline volatility requirements in the entire Pittsburgh-Beaver Valley Area (including Allegheny County) is offset by means of substitution

of commensurate emissions reductions from other measures enacted by Pennsylvania. Upon the effective date of EPA's December 2018 action, Allegheny County remained subject to ACHD's 7.8 psi RVP summer gasoline limits, while the remainder of the Pittsburgh-Beaver Valley Area became subject to Federal 9.0 RVP summer gasoline limits.

ACHD subsequently revised its own 7.8 psi RVP rule (codified at Article XXI, §§2105.90 and 2107.15 of the Rules and Regulations of the Allegheny County Health Department; amended February 21, 2019, effective March 3, 2019) to suspend applicability of ACHD's 7.8 psi RVP summer gasoline requirements. This ACHD Article XXI rule revision established its effective date as the date of EPA's removal of the revised Article XXI sections from the Allegheny County portion of the Pennsylvania SIP. On March 19, 2019, PADEP submitted this SIP revision (on behalf of ACHD) to EPA to request removal of the ACHD's RVP rule requirements from the Pennsylvania SIP. It is this March 2019 request to remove the ACHD RVP program requirements from the SIP that is the subject of EPA's current rulemaking action.

III. EPA's Analysis of Pennsylvania's SIP Revision

A. Pennsylvania's Estimate of the Impacts of Removing the 7.8 psi RVP Requirement

EPA's primary consideration for determining the approvability of Pennsylvania's request (on behalf of ACHD) to remove the County requirements for a gasoline volatility control program from its SIP is whether this requested action complies with section 110 of the CAA, and specifically with section 110(l), governing removal of an EPA-approved SIP requirement.¹

¹ CAA section 193, with respect to removal of requirements in place prior to enactment of the 1990 CAA Amendments, is not

Section 110(l) of the CAA prohibits EPA from approving any SIP revision if such revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. An earlier Pennsylvania SIP revision submitted to EPA on May 2, 2018 included a “noninterference demonstration” explaining how the removal of the 7.8 psi RVP requirement would not interfere with attaining or maintaining any NAAQS in the entire Pittsburgh – Beaver Valley Area, including Allegheny County.

EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets CAA section 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated, but for which EPA has not yet made designations. In evaluating whether a given SIP revision would interfere with attainment or maintenance, as required by CAA section 110(l), EPA generally considers whether the SIP revision will allow for an increase in actual emissions into the air over what is allowed under the existing EPA-approved SIP. In the absence of an attainment demonstration or maintenance plan that demonstrates removal of an emissions control measure will not interfere with any applicable NAAQS or requirement of the CAA under section 110(l), states may substitute equivalent emissions reductions to compensate for any change to a SIP-approved program, with the purpose of providing that the status quo air quality is preserved.

As discussed in the NPRM for this action, for removal of the Allegheny County low-RVP

relevant because Pennsylvania’s RVP control requirements in Allegheny County (or even the entire Pittsburgh-Beaver Valley Area) were not included in the SIP prior to enactment of the 1990 CAA amendments.

requirement from the SIP, PADEP and ACHD relied upon the existing CAA 110(l) noninterference demonstration that was prepared in support of PADEP's May 2, 2018 SIP revision approved by EPA in December 2018. Because EPA had already acted on that demonstration applicable to removal of 7.8 psi RVP gasoline in the entire Pittsburgh-Beaver Valley Area, EPA did not completely reconsider the content and findings of that demonstration with respect to removal in this action of ACHD's similar rule applicable only to Allegheny County. EPA's review of the Commonwealth's analysis is contained in the docket for EPA's prior action (published December 20, 2018 (83 FR 65301)) to remove the PADEP 7.8 psi RVP program from the Pittsburgh-Beaver Valley Area. Based on our review of the information provided, EPA found that PADEP used reasonable methods and the appropriate tools (e.g., emissions estimation models, emissions factors, and other methodologies) in estimating the effect on emissions from removing the 7.8 psi RVP summertime gasoline program for the purpose of demonstrating noninterference with any NAAQS under CAA 110(l).

The result of the analysis was that with the substituted measures, the entire Pittsburgh-Beaver Valley Area will experience lower levels of ozone pollution precursors of volatile organic compounds (VOCs) and nitrogen oxides (NOx), and of fine particulate matter smaller than 2.5 microns (PM_{2.5}), with the substitute measures in place than it would with continued operation of the 7.8 psi RVP program in the area. In reviewing ACHD's March 2019 submittal, EPA considered whether there was any new circumstances or information since the May 2018 demonstration submitted by PADEP that would cause EPA to reconsider whether the prior analysis was still valid. Neither EPA nor the commenters identified any such changes in circumstances which would invalidate the May 2018 demonstration analysis.

EPA concludes that the Commonwealth's May 2018 demonstration supporting removal of the PADEP low-RVP rule (which covered the entire Pittsburgh-Beaver Valley Area from the SIP, including Allegheny County) continues to show that removal of state and local 7.8 RVP gasoline requirements will not interfere with the attainment or maintenance of any NAAQS in the area. Thus, the removal of the 7.8 psi low RVP fuel program requirements in the Allegheny County portion of the Pittsburgh-Beaver Valley Area does not interfere with Pennsylvania's ability to demonstrate compliance with any NAAQS. Based on the May 2018 PADEP CAA 110(l) noninterference analysis approved by EPA and reevaluated by EPA in this action (which is included as a supporting element of the March 2019 SIP revision), EPA concludes that the current action to remove the 7.8 psi RVP fuel requirement in Allegheny County will not negatively impact the Pittsburgh-Beaver Valley Area's ability to attain or maintain any NAAQS or interfere with reasonable further progress or with any other CAA applicable requirement.

IV. Response to Comments Received During the Public Comment Period on the NPRM

EPA received comments from six separate commenters on our April 26, 2019 (84 FR 17762) proposed action. One of these commenters was supportive of EPA's proposed action, while the rest opposed at least some aspects of our proposed rulemaking. EPA's summary of the significant adverse comments received during the public comment period for the proposed rulemaking and our responses to those comments are listed below.

Comment 1: (EPA-R03-OAR-2019-0144-0020) The commenter notes that EPA granted a federal "preemption waiver" under section 221 (sic) (Title II) of the CAA but does not explain why that waiver is now being revoked. The commenter contends that EPA is on a march to

deregulate and remove CAA protections to make sure areas such as Pittsburgh don't (sic) violate Federal VOC and ozone standards. The commenter recommends that EPA disapprove the Commonwealth's request to remove the Allegheny County 7.8 psi RVP program from the SIP until the preemption waiver is resolved. The commenter suggests that if a preemption waiver is no longer warranted, EPA must formally remove the preemption waiver from the SIP before EPA can remove the County low-RVP gasoline program from the SIP.

Response 1: EPA believes the commenter is referring to exclusive federal control over the regulation of fuels and fuel additives granted by section 211 of the CAA. Specifically, CAA section 211(c)(4)(A) preempts state fuel controls that are different from federal fuel controls and provides exceptions to exclusive federal regulation that include a waiver of preemption. Under CAA section 211(c)(4)(A), states (or political subdivisions thereof) are generally prohibited from prescribing, for purposes of motor vehicle emission control, any control of a component of a fuel or fuel additive for use in a motor vehicle engine. However, under CAA section 211(c)(4)(C), a state may regulate fuel or fuel additives if it adopts such a measure as part of a SIP, but EPA may only approve such a program into a SIP after finding that the state or local control is necessary to achieve a primary or secondary NAAQS and if there are no other measures that would bring about timely attainment. Section 211(c)(4)(C)(i). EPA waived preemption and approved the Commonwealth's SIP requiring use of 7.8 psi RVP gasoline during summer months in the Pittsburgh-Beaver Valley Area (including Allegheny County) in two separate SIP revisions in 1998 and 2001.² It is the 2001 SIP approval requiring the use of low-RVP fuel in the Allegheny

² On June 8, 1998 (63 FR 31116), EPA approved a SIP revision (submitted December 3, 1997; as revised April 17, 1998) by

County portion of the Pittsburgh-Beaver Valley Area that the County is now seeking to remove from the SIP. On April 26, 2019 (84 FR 17764), EPA proposed to approve the County request to remove the use of low-RVP fuel in the Allegheny County portion of the Pittsburgh-Beaver Valley Area from the SIP. As explained earlier, EPA approval of a state fuel measure entails the waiver of preemption contained in CAA 211(c)(4)(C)(i). Under this provision, EPA may approve state fuel controls in a SIP if EPA determines that the fuel control is necessary to achieve the NAAQS that the SIP implements.

In sum, the Agency is required to consider CAA section 211(c)(4)(C) requirements when approving a state or local fuel control program that would serve in lieu of the otherwise applicable Federal fuel control program. EPA can only waive preemption if the requirements of CAA section 211(c)(4)(C)(i) and (v) are met. Nothing in these provisions, however, preclude either a state or local government from subsequently removing an approved state fuel measure.³ Thus, there is no requirement for a “waiver” to remove the 7.8 psi RVP requirement from either the Allegheny County portion or the Pennsylvania portion of the SIP. Instead, as shown in Section III of this rulemaking action, Allegheny County or Pennsylvania need only comply with CAA section 110(l) given that the removal of 7.8 psi RVP requirement entails a SIP revision. As previously explained, CAA section 110(l) prohibits EPA from approving any SIP revision if such

PADEP to require the use of 7.8 psi RVP gasoline in summer months in the 7-county Pittsburgh-Beaver Valley 1-hour ozone nonattainment area. On April 17, 2001 (66 FR 19724), EPA approved a SIP revision (submitted March 23, 2000) by PADEP, on behalf of ACHD, to require the use of 7.8 psi RVP gasoline in summer months in the Allegheny County portion of the same 1-hour ozone nonattainment area. EPA’s rationale for granting a federal preemption waiver under CAA 211(c)(4)(C) is explained in the June 8, 1998 final rule, with the same rationale serving as the basis for the April 17, 2001 final rule.

³ See for e.g., SIP revision for the removal of 7.0 psi RVP from the state of Alabama SIP. 77 FR 23619 (April 20, 2012).

revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA.

The 7.8 psi state and local rules were cited as control measures that contributed to ozone reduction in Pennsylvania's April 9, 2001 maintenance plan supporting the Commonwealth's request for redesignation to attainment of the 1979 1-hour ozone NAAQS, which EPA approved on October 19, 2001 (66 FR 53094). In that same final rule, EPA determined that the Pittsburgh-Beaver Valley Area had attained the 1-hour ozone NAAQS by its legal attainment deadline, based on three years of air quality data. On the basis of that determination, EPA found that an attainment demonstration (and other related requirements under Part D of Title I of the CAA) were not applicable requirements under the CAA for the Pittsburgh-Beaver Valley 1-hour ozone nonattainment area. The Commonwealth's reasonable further progress plan for the Pittsburgh-Beaver Valley Area was prepared prior to adoption of the 7.8 psi RVP rule, and therefore did not include reductions from that measure to demonstrate progress towards achievement of the NAAQS. Therefore, EPA believes the only requirement that must be satisfied prior to removing an EPA approved state or local fuel control measure are the provisions of CAA section 110 related to SIP actions – and specifically the required showing that EPA approval of a revision to the SIP does not interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment, or other applicable CAA requirement.

Comment 2: (EPA-R03-OAR-0144-0016) The commenter contends that in the proposed action, EPA certifies that the action does not have a significant economic impact on a substantial number of small entities, but that comments submitted by Sunoco LLC during the County's rule

adoption asserted that the rule revision will "have economic advantages to both citizens and businesses of the Pittsburgh-Beaver Valley area." The commenter asks how EPA can certify that the action has no significant economic impact if one of the nation's largest oil producers emphasized the economic savings and asks to see EPA's analysis showing that removal of the program does not significantly impact small entities.

Response 2: EPA does not agree that it is required to assess the economic impact of approving Allegheny County's request to remove the low-RVP gas requirement from the Allegheny County portion of the Pennsylvania SIP. As explained in the introductory sentences to the Statutory and Executive Order Reviews section of the NPRM:

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

...

is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

84 FR 17762, 17767 (April 26, 2019).

EPA's approval of the State's request to remove from the SIP the requirement to use low-RVP gasoline in Allegheny County merely approves an enacted state law (ACHD's removal of the low-RVP requirement from Allegheny County's regulations) as meeting the Federal CAA requirements and does not impose any additional requirements beyond those already imposed by state law. For this reason, EPA's action in approving this SIP revision does not have a significant impact under the Regulatory Flexibility Act.

Comment 3: (EPA-R03-OAR-0144-0016) The commenter contends that EPA failed to require a noninterference demonstration for the revoked 1-hour ozone NAAQS. The commenter argues that PADEP's noninterference demonstration (prepared by PADEP as part of its April 2018 SIP revision, supporting removal of both State and County low-RVP gasoline rules from the SIP) contains photochemical grid modeling that addresses only the 2008 8-hour ozone NAAQS and not the prior, revoked 1-hour ozone NAAQS. The commenter argues that because the 1-hour ozone standard is based on a substantially different averaging time and exceedance framework than the 8-hour NAAQS, EPA must ensure that removal of an area-wide requirement (low-RVP fuel) is protective, as EPA claims.

Response 3: The Commonwealth's CAA 110(*l*) demonstration focused on demonstrating that current air quality can be maintained for all NAAQS without continuation of the existing 7.8 psi RVP gasoline control measure. The basis for the Commonwealth's demonstration is through substitution of equivalent or greater reductions in primarily VOC and NO_x emissions from other measures to offset the VOC and NO_x reductions that would no longer be achieved upon removal of the 7.8 psi RVP gasoline control measure.

In evaluating whether a SIP revision would interfere with maintenance or attainment, EPA generally considers whether the SIP revision will allow for an increase in actual emissions into the air over what is allowed under the existing EPA-approved SIP. In assessing compliance with CAA section 110(l), EPA treats each submission as a unique case, reviewing and acting upon each one on a case-by-case basis through regional SIP action. However, EPA did broach the subject of compliance with CAA 110(l) noninterference in guidance prepared specifically for removal of another control measure, entitled “*Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*,” August 7, 2012 [EPA-457/B-12-001]. Therein, EPA stated that it could propose to approve a SIP revision that removes or modifies a control measure if there is a basis in the state’s submittal for concluding that the SIP revision does not interfere with attainment or maintenance of any NAAQS or requirements related to reasonable further progress towards attainment of a NAAQS. Suggested methods listed in that guidance document for demonstrating noninterference include: 1) substitution of new control measures that offset the reductions of the pollutants addressed by the prior plan; 2) offset of emissions due to excess emission reductions not accounted for in the current SIP; or 3) emissions increases that are shown not to interfere with attainment.

Pennsylvania has demonstrated that the emission reductions achieved by the 7.8 low RVP gasoline program have been offset by emission reduction measures not previously quantified or claimed in the approved SIP, and EPA approved the Commonwealth’s noninterference demonstration for the entire Pittsburgh-Beaver Valley Area as part of our December 20, 2018 final rule approving the Commonwealth’s removal of the PADEP 7.8 psi low-RVP control

measure from the SIP (a measure that applied to the 7-county Pittsburgh-Beaver Valley Area, including Allegheny County).

As the commenter noted, the 1-hour ozone NAAQS was revoked by EPA under the Agency's requirements for implementation of the 1997 ozone NAAQS. 40 CFR 50.9(b), 62 FR 38894 (July 18, 1997), 69 FR 23951, 23969 (April 30, 2004). The 1-hour ozone NAAQS was no longer applicable in the Pittsburgh-Beaver Valley Area as of June 15, 2005. We need not consider whether this SIP revision interferes with the revoked 1-hour NAAQS. By definition, a revision cannot interfere with something that is no longer in effect, such as a revoked NAAQS. EPA has dealt with the anti-backsliding concerns related to revoked NAAQS by promulgating regulations to address that issue. Thus, so long as the anti-backsliding requirements in the ozone-requirements rule are met, further demonstration of noninterference under 110(*l*) are not necessary.

Comment 4: (EPA-R03-OAR-0144-0016) The commenter asks why EPA would remove a measure that achieves VOC reductions for a county that EPA has designated nonattainment for the 2012 PM_{2.5} NAAQS, when VOC reductions could help the area attain the PM_{2.5} NAAQS, because VOCs can be precursors to PM_{2.5} formation. The commenter contends that EPA should not allow Allegheny County to remove the low-RVP gasoline program from the SIP until it has been shown that the area is able to meet the PM_{2.5} NAAQS without the additional VOC reductions achieved by this rule.

Response 4: Section 110(*l*) of the CAA prohibits EPA from approving a plan revision “ . . . if the revision would interfere with any applicable requirement concerning attainment and

reasonable further progress, . . . or any other applicable requirement of this chapter.” In this SIP revision, EPA believes that the noninterference demonstration submitted by PADEP for the entire Pittsburgh-Beaver Valley Area does show that the small emission increase of VOCs resulting from removal of the low-RVP gasoline requirement are more than offset by reductions in VOC emissions from the shutdown of the Guardian Glass facility and the adoption of new limits on solvents, paints and adhesive adopted by Pennsylvania. In EPA’s guidance on removing stage II gasoline vapor recovery controls, EPA lays out several alternative means of assessing noninterference. Therein, EPA specifically states, “In evaluating whether a given SIP would interfere with attainment or maintenance, . . . EPA generally considers whether the SIP revision will allow for an increase in actual emissions into the air over what is allowed under the existing EPA-approved SIP. The EPA has not required that a state produce a new, complete attainment demonstration for every SIP revision, provided that the status quo air quality is preserved. *See, e.g., Kentucky Resources Council, Inc. v. EPA*, 467 F.3d 986 (6th Cir. 2006).⁴”

Pennsylvania has demonstrated noninterference with all NAAQS through primarily an emissions substitution approach, using methods prescribed by EPA guidance under section 110(l) of the CAA. EPA approved Pennsylvania’s CAA section 110(l) noninterference demonstration for the entire Pittsburgh-Beaver Valley Area (including Allegheny County) on December 20, 2018 (83 FR 65301).

Comment 5: (EPA-R03-OAR-2019-0144-0021) Commenter notes that in Pennsylvania’s prior SIP revision requesting removal of the state’s low-RVP gasoline rule applicable to the

⁴ See p. 4, “Guidance on Removing Stage II Gasoline Vapor Recovery Control Program from SIPs and Assessing Comparable Measures,” (April 7, 2012) [EPA-457/B-12-001].

Pittsburgh-Beaver Valley Area, PADEP stated that it wished to retain any remaining balance of creditable emission reductions from the permanent closure of the Guardian Industries glass manufacturing facility located in Allegheny County, Pennsylvania. However, EPA's proposed approval of this prior SIP action states that no remaining balance of credits would be held by the state, and EPA's final action did not address whether the remaining balance of creditable emission reductions were forfeited or retained by Pennsylvania. The commenter requests that EPA clarify whether the remaining balance of emission reductions are retained by Pennsylvania for future use and quantify how many remain and/or are forfeited, so that there is no future double counting of these emissions reductions.

Response 5: EPA received a similar comment in response to our proposal to approve removal of PADEP's 7.8 psi RVP gasoline program from the non-Allegheny County portions of the Pittsburgh-Beaver Valley Area.⁵ In our final December 2018 rulemaking for the Pittsburgh-Beaver Valley Area 7.8 psi RVP program SIP removal action, EPA clarified that emission reduction from Guardian Glass closure remained available. The Guardian Glass facility permanently ceased operation in August 2015 but did not request that potentially creditable emission reductions be preserved in the emission inventory within one year of closure, which is a prerequisite for their use as emission reduction credits (ERCs) for nonattainment new source review (NNSR) purposes under Pennsylvania's rules governing that program (25 Pa. Code 127.207(2)). As a result, the reductions are no longer eligible for future use as ERCs for NNSR offset purposes, but they remain available for other uses. As EPA stated in our December 20,

⁵ See 83 FR 27901, June 15, 2018

2018 final rule, because these surplus emission reductions no longer qualify as ERCs under Pa. Code Chapter 127, Subchapter E, EPA believes they do not need to be memorialized in either a state plan approval, or a SIP revision or emission inventory. The facility's permits are no longer valid, and reactivation of the facility would be subject to NNSR and re-permitting.

However, that does not mean that these remaining emission reductions from closure of this facility have no use. PADEP reserved the right to request consideration of these reductions for future use for other SIP planning purposes other than NNSR offsets -- potentially as part of a future demonstration relating to NAAQS planning requirements. Any such future use would require a SIP revision at that time, with a demonstration of the emission reductions viability for use in any future SIP revision. Although PADEP quantified the remaining reductions that are surplus after offsetting removal of the low-RVP gasoline program, the surplus reduction quantities listed in EPA's December 20, 2018 SIP action are not directly translatable to any future SIP planning use. Any future use of the remaining emission reductions would need to be reevaluated as part of a subsequent SIP action supporting their potential use at that time for SIP planning purposes.

EPA does not agree that it must quantify the remaining surplus or the amount that should be forfeited as part of this action. EPA has clarified its position that these reductions can no longer be used for NNSR offset purposes under the relevant state rule. EPA cannot memorialize the remaining emission reductions potentially available for future SIP purposes as the reductions must be re-evaluated in the context of the specific SIP action for which the Commonwealth wishes to use the reductions.

Comment 6: (EPA-R03-OAR-2019-0144-0019) The commenter argues that EPA and Allegheny County have not provided an adequate demonstration that removal of the low-RVP gasoline program will not interfere with attainment of the PM_{2.5} NAAQS, because VOCs are a precursor to formation of ambient PM_{2.5}. The commenter contends that PADEP should perform modeling regarding the impacts of the removal of the RVP requirement, rather than simply comparing overall emissions increases and decreases of VOCs. Commenter claims that the submitted noninterference analysis only compares the magnitude of emissions reductions from the 2015 shutdown of the Guardian Industries facility and reductions from a regulation for control of VOCs from adhesives, sealants, primers, and solvents, promulgated by DEP, to the magnitude of the emissions increases from discontinuation of the low-RVP requirement. The commenter notes that Allegheny County has continued to be in nonattainment with the PM_{2.5} standards despite the fact that the reductions in emissions relied upon by PADEP's analysis occurred prior to 2016. Commenter believes this continued nonattainment despite the reductions from earlier shutdowns and regulatory changes means the Department should be looking more closely at local impacts from regulatory initiatives rather than offsetting emissions at different locations.

Response 6: EPA is not evaluating the adequacy of the state's separate, ongoing efforts to develop an appropriate attainment area plan for the 2012 PM_{2.5} NAAQS for the Allegheny County nonattainment area in this action. The commenter's concerns with respect to the modeling and monitoring analyses contained in the state's draft PM_{2.5} attainment plan are not relevant to EPA's action to remove the 7.8. psi RVP rule from the SIP, and as such do not

warrant consideration in this final rule. As indicated in response to a prior comment, in evaluating whether a SIP revision (e.g., removal of an existing rule from the SIP) would interfere with attainment or maintenance of a NAAQS, per CAA section 110(l), EPA generally considers whether the SIP revision will allow for an increase in actual emissions in the air over what is allowed under the existing approved SIP, in an attempt to ensure that the status quo with regard to air quality is maintained. The EPA has not required that a state produce a new complete attainment demonstration for every SIP revision, provided that the status quo air quality is preserved.⁶

EPA has reviewed the Commonwealth's noninterference demonstration for this action to remove the 7.8 psi RVP rule from the Pennsylvania SIP and determined that the provided analysis shows that the emissions from removal of that rule have been fully offset by substitute reductions in VOCs and NO_x from other measures not already in the approved SIP, and this analysis included consideration of the PM_{2.5} NAAQS.⁷ EPA believes that it would be inappropriate to evaluate the removal of the ACHD low-RVP rule from the SIP in this action premised upon the potential approvability of the County's proposed Allegheny County PM_{2.5} attainment plan, as that plan is currently out for public comment by the County and may change in response to any comments received before it is formally submitted to EPA as a SIP revision. EPA is not evaluating the

⁶ See p. 4, "Guidance on Removing Stage II Gasoline Vapor Recovery Control Program from SIPs and Assessing Comparable Measures," (April 7, 2012) [EPA-457/B-12-001].

⁷ See Table 8 (p. 23) of PADEP's "Final State Implementation Plan Revision to Remove Pittsburgh-Beaver Valley Area Summertime Low Reid Vapor Pressure Gasoline Volatility Requirements and Supporting Noninterference Demonstration Under Section 110(l) of the Clean Air Act" dated April 2018, which summarizes direct PM_{2.5} (as well as VOC and NO_x) emission reductions from offsetting measures. The PADEP noninterference demonstration also discusses the Commonwealth's evaluation of PM_{2.5} noninterference on pp. 25-26 of that document.

adequacy of the state's separate ongoing efforts to develop an appropriate attainment plan for the 2012 PM_{2.5} NAAQS for the Allegheny County nonattainment area in this action. Further, the commenter's concern with respect to the modeling and monitoring analyses contained in the Commonwealth's draft PM_{2.5} attainment plan is not relevant to EPA's action to remove the 7.8. psi RVP rule from the SIP, and as such do not warrant consideration in this final rule.

Therefore, EPA is not directly addressing the merits of these comments in this action and recommends that the commenter submit its comments to the County during the County's current administrative process and also during any future action EPA may take on that plan after the state formally submits the ultimate plan to EPA as a SIP revision. ACHD intends to submit to EPA a PM_{2.5} attainment plan which will address the PM_{2.5} issue. The proper place to evaluate how to achieve PM_{2.5} attainment is in response to that plan.

Comment 7: The commenter contends that PADEP's approach of direct substitution of emissions of pollutants with reductions associated with other measures is inadequate to ensure that there is no increase in ambient pollution concentrations from such an approach, and that ambient concentration modelling is warranted to ensure NAAQS noninterference or other CAA requirements, such as potential impact on regional haze.

Response 7: While ambient concentration modeling is necessary for an attainment plan, it is not necessary to demonstrate attainment for purposes of amending the SIP to remove a rule. As was discussed in response to a prior comment, noninterference is the only CAA required test for removal of a rule that is not mandatory under the CAA, nor an applicable Part D measure mandated by the law. In demonstrating noninterference under CAA 110(I), ambient

concentration modeling to show the impact of the removal of a rule is but one possible test of noninterference – albeit not a required one. Direct substitution of other measures that achieve equivalent emissions reductions to offset the removed measure is an allowable method of demonstrating CAA 110(l) noninterference.

Comment 8: (EPA-R03-OAR-2019-0144-0149) The commenter contends that removal of the low-RVP requirements may affect the control strategy for the PM_{2.5} attainment demonstration. The commenter claims that PADEP should strengthen its control strategy to reduce concentrations of fine particulates presenting harm to individuals rather than finessing attainment by ignoring data at the Liberty monitor through mis-interpretation of an EPA guidance document. Among other things, that control strategy could include the continuation of the RVP requirements, depending on the results of a proper factual analysis.

Response 8: EPA believes that this comment should be addressed to ACHD's proposed attainment plan for the 2012 PM_{2.5} NAAQS for Allegheny County, rather than to this action to remove the ACHD low-RVP measure from the SIP. The PM_{2.5} attainment plan is currently undergoing the County's public comment process and has not yet been formally submitted to EPA as a SIP revision. As such, this comment should be submitted during ACHD's public comment period for the PM_{2.5} attainment plan. Concerns raised by the commenter with respect to whether the area has actually attained the PM_{2.5} standard or done so in a timely manner, or whether ACHD has followed EPA guidance related to the monitoring or modeling analyses that

underlie that demonstration, are not relevant to EPA's current action regarding whether to approve the Commonwealth's request for removal the 7.8. psi RVP gasoline rule from the SIP.

Comment 9: Commenter claims the PM_{2.5} Attainment Demonstration is flawed because it relies on unrepresentative meteorological data from the base year 2011 (p.4). Commenter alleges that the 2011 meteorological data contains the second lowest number of inversions (134) in a year, which is lower than the typical number of inversions in the last ten years (157). Also, commenter states that PADEP's claim that the 2011 data is more representative of normal years because the Pittsburgh area has had above normal temperatures and above normal levels of precipitation in "recent years" is not supported by the data.

Response 9: As explained above, this comment concerns the PM_{2.5} attainment demonstration, rather than this SIP action, and EPA will therefore not address this comment here because it is beyond the scope of this rulemaking action.

Comment 10: Commenter claims that future emissions inventories for the proposed attainment demonstration may not be complete and accurate because RVP 7.8 psi compliant fuel was burned in the past but will not be burned in the future and it is not clear how or whether VOC emissions from the higher RVP fuels that will be burned in the future are tracked or accounted for in the future emission inventory. Some stationary sources have stored fuel with varying RVP, ranging from 7 psi to 13 psi. See Appendix D (Emissions Inventories) to Proposed Attainment Demonstration. At a minimum, there is a factual question regarding the degree to which the removal of the RVP requirements will affect the formation of fine particulates.

Response 10: Because this comment is questioning how the removal of low-RVP fuel will affect the emissions inventory for the PM_{2.5} attainment demonstration, EPA believes it should be submitted as a comment on that plan. EPA believes it would be more appropriate to respond to this comment, if submitted as a comment on any action EPA proposes on ACHD's PM_{2.5} attainment plan, in the context of responding to comments on that plan.

V. Impacts on the Boutique Fuels List.

Section 1541(b) of the Energy Policy Act of 2005 required EPA, in consultation with the U.S. Department of Energy, to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2006 (71 FR 78192), EPA published the list of boutique fuels. EPA maintains the current list of boutique fuel programs on its web site at: <https://www.epa.gov/gasoline-standards/state-fuels>. The final list of boutique fuels was based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that EPA remove a fuel from the published list if it is either identical to a Federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, EPA interpreted this requirement to mean that a fuel would have to be removed from all states' SIPs in which it was approved in order to remove the fuel type from the list. (71 FR 78195, December 28, 2006).

The 7.8 psi RVP fuel program is a fuel type that is included in EPA's boutique fuel list (published at 71 FR 78198, December 28, 2006, and maintained online at: <https://www.epa.gov/gasoline-standards/state-fuels>). Subsequent to the final effective date of EPA's approval of Pennsylvania's March 19, 2019 SIP revision to remove the ACHD rule under

Article XXI, EPA will update the State Fuels and Gasoline Reid Vapor Pressure web pages with the effective date of the SIP removal. At that time, the entry for Pennsylvania will be deleted from the list of boutique fuels, because Allegheny County was the final remaining 7.8 psi RVP program area in the Commonwealth of Pennsylvania. However, the boutique fuels list will retain the 7.8 psi RVP fuel type, as this fuel program type continues to be in other state SIPs.

VI. Final Action and Effective Date

A. Final Action

EPA is approving Pennsylvania's March 19, 2019 SIP revision requesting the removal of ACHD's 7.8 psi RVP summer gasoline program for Allegheny County (under Article XXI of the Rules and Regulations of the Allegheny County Health Department; amended February 21, 2019, effective March 3, 2019) from the Pennsylvania SIP. Our approval of the March 19, 2019 SIP revision is being taken in accordance with CAA requirements in section 110.

B. Notice of Effective date

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the

Federal Register. EPA is issuing this final rule under CAA section 307(d)(1) which states:

“The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies.” Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on [insert date of publication in the Federal Register]. APA section 553(d) allows an effective date less than 30 days after

publication for a rule “that grants or recognizes an exemption or relieves a restriction.” 5 U.S.C. 553(d)(1). This rule fits within that exception because it lifts a restriction on the introduction into commerce of gasoline with an RVP of greater than 7.8 psi sold in Allegheny County, Pennsylvania between June 1 and September 15 of each year. Because ACHD adopted this rule in February 2019 (just prior to the commencement of the May 1 regulatory compliance deadline requiring use of low-RVP fuel in the Summer 2019 fuel season) and then submitted the rule to EPA in March 2019, EPA’s final action will coincide with the summer low-RVP compliance period, resulting in supply chain uncertainty for affected gasoline refining, distribution, and retail industries. Additionally, the effective date for ACHD’s revocation of the low-RVP gasoline requirement is based upon EPA’s final rulemaking effective date, creating further industry uncertainty with respect to regulatory compliance in the time prior to EPA’s final rule effective date. Therefore, this action can be considered to relieve a restriction that would otherwise prevent the introduction into commerce of gasoline with an RVP of greater than 7.8 psi. By setting the effective date of this action to the date of final rule publication, EPA could alleviate potential supply disruption that might occur due to the timing of this action during the 2019 summer fuel control season. Therefore, EPA is making this action to remove the Allegheny County program from the Pennsylvania SIP effective on **[insert date of publication in the Federal Register]**.

VII. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action to approve Pennsylvania's request for removal of summer season 7.8 psi RVP gasoline requirements for Allegheny County from the SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 24, 2019.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN—Pennsylvania

§ 52.2020 [Amended]

2. In § 52.2020, the table in paragraph (c)(2) is amended by removing:

- a. The subheading entitled “Subpart 9—Transportation Related Sources” and the entry “2105.90”; and
- b. Under “Part G—Methods” the entry “2107.15”.

[FR Doc. 2019-14258 Filed: 7/3/2019 8:45 am; Publication Date: 7/5/2019]